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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1936.

No. [redacted] 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,
Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,
Appellees.

Brief for Appellants.

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OCTOBER TERM, A. D. 1936.

No. 713

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,

Appellees.

Brief for Appellants.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois, filed October 27, 1936, is reported in 364 Ill. 547, 5 N. E. (2d) 84. The opinion of the Superior Court of Cook County, Illinois, was delivered orally and will be found at R. 259.

STATEMENT WITH RESPECT TO JURISDICTION.

This is a direct appeal from a final judgment of the Supreme Court of Illinois, entered October 27, 1936 (R. 273), pursuant to the opinion of that court filed the same day (R.

265). A jurisdictional statement in accordance with Rule 12 of this Court has been filed. On March 8, 1937, this Court ordered that further consideration of the question of jurisdiction should be postponed to the hearing of the case upon the merits. In view of this fact, Point I of the argument herein has been devoted to the question of jurisdiction.

STATEMENT OF FACTS.

Appellants are retired teachers and principals in the Chicago public school system, nine hundred forty-five in number. Appellees are the Chicago Board of Education, its members and officers, the City of Chicago, its Mayor, Treasurer, and Comptroller. Appellants attack as unconstitutional and therefore void, an Illinois statute of July 12, 1935, which has been construed and found applicable to them by the highest court of Illinois. As so construed, the act operates to reduce their retirement pay to $500 per year, in lieu of amounts which theretofore ranged from $1,000 to $1,500 per year. Appellants maintain in this Court, and have at all times maintained in the courts below, that this act, in so far as it is applicable to them, impairs previously existing contracts created by an earlier statute of the State of Illinois and deprives them of property without due process of law, all in violation of the Constitution of the United States. A clear understanding of the case requires the statement of certain incidents which preceded the adoption of the statute now under attack.

The school system of Chicago is administered by a Board of Education of eleven members appointed by the Mayor (Ill. State Bar Stats. 1935, chap. 122, par. 152, sec. 128). While the Board of Education was limited and governed in the performance of its duties and its relations with its teachers by a general school law, passed in 1909,

and amended from time to time, no authoritative interpretation of the teacher-Board contractual relation in Chicago occurred until the decision of the Supreme Court of Illinois in the case of *People ex rel. Fursman* v. *City of Chicago,* 278 Ill. 318. There the Supreme Court of Illinois held that the Board might decline to reemploy a teacher at the beginning of any school year if—"the applicant is married or unmarried, is of fair complexion or dark, is or is not a member of a trades union, or whether no reason is given for such refusal." (P. 326.) The teacher, in other words, had no guarantee of permanent employment and no assurance against dismissal at the end of any school year.

The *Fursman case* was decided April 19, 1917. On April 20, 1917, a statute amending the general school law was passed and became known as the Otis Amendments. Section 138 of the school law in so far as applicable to tenure of office thereafter reads:

> "* * * after satisfactory service for a probationary period of three years, * * * appointments of teachers and principals shall become permanent, subject to the rules of the board concerning conduct and efficiency, and subject to removal for cause in the manner provided by section 161 of this Act * * *."

Section 161 of the Otis Amendments, referred to in the foregoing quotation, provided that after service for a three year probationary period, no teacher or principal shall

> "be removed except for cause, * * * upon written charges presented by the superintendent of schools, to be heard by the board, * * * after thirty days' notice, with copy of the charges, is served upon the person against whom they are preferred, * * *"

These sections of the Otis Amendments are printed in the Appendix, page 59.

Section 138 was amended in July, 1935, by inserting a clause that the tenure therein provided for should be "subject to termination by compulsory retirement at the age of sixty-five years."

On April 8, 1925, the Superintendent of Schools of Chicago recommended to the Board of Education that efforts be made to secure the enactment of a law providing for compulsory retirement of teachers at age 70 and for the payment to them thereafter of the sum of $1,500 per year for life. The reasons advanced by the Superintendent in support of his recommendation were that under the Tenure of Office Act teachers had continued in service beyond the age of efficiency; that many had passed 70 and had not retained the physical and mental vigor necessary for the proper discharge of their duties, and should therefore be replaced by younger persons (R. 51). This report, to which was attached a draft of a proposed retirement law, was unanimously approved by the Board (R. 53).

Subsequent to this recommendation and the action of the Board thereon, an act was introduced in the legislature to provide for teacher retirement. Its final approval was delayed until May 19, 1926 (R. 6, 112). As a result of this delay, the Superintendent, on November 25, 1925, made a further report to the Board, recommending an amendment to its rules. The amendment recited in a preamble that teachers were entitled under the laws of the state to permanent teaching appointments after a probationary period of three years, subject to removal for cause; that it was generally recognized that a letting down of vigor and mental initiative and ambition usually occurs about the age 70; but that experienced teachers after long and faithful serv-

ice were still of value to the schools. The amendment to the rules of the Board then went on to create a new status for teachers, known as "Emeritus Service," which was virtual retirement subject to call at a sliding rate of compensation of from $1,500 to $2,500 per year. The proposal of the Superintendent to establish an Emeritus Service by means of a change in the rules of the Board was adopted by the Board on December 9, 1925 (R. 56).

In February, 1928, the rules of the Board relating to Emeritus Service were held invalid by the Appellate Court of Illinois, First District, in the case of *Armstrong* v. *City of Chicago,* 247 Ill. App. 584. This was an injunction proceeding to restrain the transfer of certain Chicago teachers to an emeritus status against their will and, as they urged, contrary to their rights under the Tenure law of the state. The court denied the right of the Board to terminate the employment of teachers in this manner, and directed the entry of a decree reinstating them in their previous positions. The opinion held, page 593, that the purpose of the Otis Amendments of 1917 was to secure for teachers and principals a permanency in the tenure of their positions and to eliminate the necessity for the making of yearly contracts after the probationary period. This decision was not appealed, was final, and is the last case upon the subject in Illinois.

While the *Armstrong case* was pending in the courts, the statute known as the Miller Act of May 19, 1926, went into effect, entitled "An Act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and the payment of retirement annuities."

Its provisions are set forth in full in the Appendix pages 62-63. Briefly, it applied to cities having a population

of over 250,000 and provided for the compulsory retirement, upon compensation, after 20 years' service of $1,500 "annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes," of all teachers, principals, district superintendents, and assistant superintendents, who were—

In 1926, 75 years or more of age;
In 1927, 74 years or more of age;
In 1928, 73 years or more of age;
In 1929, 72 years or more of age;
In 1930, 70 years or more of age;

subject to call for consultation and advisory service and without impairment of their rights under any other retirement fund provisions.

Sections 1 and 2 of the Miller Act, containing the foregoing provisions, remained in full force and effect without change from May 19, 1926, its effective date, until the 1935 amendment went into effect on July 12, 1935.

On March 9, 1927, the Chicago Superintendent of Schools recommended to his Board an amendment to the Miller retirement act of 1926 to provide also for voluntary retirement at an earlier age than the compulsory retirement at 70 years. He suggested that such a provision would give the schools relief from incapacitated teachers over 60 without additional cost, as new teachers taking the place of those retiring would begin at a lower salary scale (R. 64, 65).

On May 11, 1927, the Board approved a recommendation to employ a firm of actuaries to investigate all phases of the proposed voluntary retirement amendment to the Miller act. Such an actuarial report was received and accepted by the Board on May 25, 1927, based upon voluntary retirement at ages 65 to 70. This report considered the several financial factors involved, including gains to

be derived by replacing maximum salaried teachers with those in lower brackets and losses due to the commencement of annuities at an earlier date than previously contemplated. The conclusion was that the items would tend to offset and that net gain or loss would probably not be a material factor. The actuarial study showed that the passage of the Miller act had tended to decrease retirements between 60 and 70 years of age and that the average length of service had increased as a result. Prior to the Miller act, the average service was 31.6 years and the average age of retirement about 57. After the act the average service lasted 34.2 years and the average age of retirement was about 60 (R. 70).

The amendment to the Miller act became a law on July 1, 1927, as section 3 thereof, and permitted voluntary retirement upon annuities for life of the following amounts at the following ages:

65	$1,000
66	$1,100
67	$1,200
68	$1,300
69	$1,400
70 and thereafter	$1,500

The amendment also carried a provision for compulsory retirement at age 65 or thereafter as the result of incapacity revealed by a mental or physical examination of a teacher, which the Board was given power to order.

Section 3 of the Miller Act was amended in 1929 in regard to the service period and by eliminating voluntary retirements at age 70 and over and except as so amended remained unchanged from July 1, 1927, its effective date, until it was repealed by the 1935 amendment which became effective July 12, 1935.

The complete text of the 1927 amendment and of the 1929 amendment thereto appear in the Appendix, pages 64, 66. They did not affect the compulsory retirement provisions of the act.

One hundred sixty-two of the appellants were retired under the compulsory provisions of the Miller act of 1926 at annuities of $1,500 per year for life (R. 2, 91 to 92, 165). The allegations of the complaint and admissions of the answer show that these individuals retired at various times, as they reached retirement age, throughout the time the Miller act was in effect. The specific instances established by the record show retirements throughout the period February 1, 1927 to August 1, 1934, at the ages applicable to the respective dates (R. 13-16).

Six hundred fifty-one appellants voluntarily retired under section 3 of the Miller act, passed in 1927, and received annuities for life ranging from $1,000 to $1,500 per year. The several ages of retirement, the number at each age, and their respective annuities were (R. 8-20, 93-100, 165-166):

Number of Teachers	*Age*	*Annuity*
246	65	$1,000
91	66	1,100
104	67	1,200
73	68	1,300
90	69	1,400
47	70 and over	1,500
651		

The appellants who retired under both the compulsory and voluntary provisions of the Miller act received the annuities to which they were entitled under the law by reason

of age and length of service, from the dates of retirement until July, 1935 (R. 31, 135).

The remaining 132 appellants were fully qualified to voluntarily retire and receive the annuities under section 3 and had made written requests to be retired (R. 22, 24, 25, 101-105, 166-170). These requests were filed in the months of May and June, 1935, and were submitted to the Board of Education at meetings held in June, 1935, by the Superintendent, with his recommendation for approval, which showed that each applicant had met the tests laid down for voluntary retirement by the Miller act. The Board, contrary to its uniform custom, postponed action indefinitely upon the requests for retirement (R. 79, 80).

The Miller act was drastically amended by the Illinois legislature by a law effective July 12, 1935. Section 3 relating to voluntary retirement was repealed, the compulsory retirement age was reduced from 70 to 65, and the amount of the retirement annuities was cut to $500 per year to be paid annually for life. The full text appears in the Appendix at pages 68-69. It will be seen that the act appears to read only prospectively and to apply only to teachers retired after its passage. Upon the passage of the 1935 act, the Board of Education took action to retire under its provisions the 132 appellants, who had sought retirement under the Miller act. Thereafter, the only sums received by any of the appellants, no matter when retired, were at the rate of $500 per year. Formal demands and protests were made by the appellants, claiming the balance of the annuities due them, but without success (R. 32-33).

Twenty of the appellants, including representatives of those who had been retired under the compulsory provisions of the original act, those retiring voluntarily, and those who had sought to retire in May and June, 1935,

filed the present action in the Superior Court of Cook County, Illinois (R. 1). By their complaint they sought to enjoin the Board of Education and others from reducing their retirement annuities and to compel the restoration and payment to them of the amounts which the Miller act in effect prior to July 12, 1935 provided should be paid for the remainder of their respective lives. The complaint was filed on their behalf and that of others similarly situated, who might choose to join in the cause. By order of the trial court the remaining appellants herein, being persons similarly situated, were permitted to intervene as parties plaintiff (R. 90, 164).

Appellants, in their complaint, alleged their willingness to render consultation and advisory service and to comply in all respects with the requirements of the Miller act in effect prior to the 1935 amendment. They claimed that their compliance with the provisions of this act and with its prerequisites as to age and length of service had given rise to contractual and quasi-contractual rights to receive for life the retirement allowances provided for by that act at the time of their respective retirements. They further alleged that if the 1935 amendment was held applicable to them and effective in reducing their annuities to a uniform rate of $500 per year, such act would be in violation of section 10, Article I of the Constitution of the United States and of the Fourteenth Amendment to the Constitution, and would be invalid as an attempt to take away vested rights and to take property without due process of law, and as an attempt to impair the obligation of contracts (R. 40).

The defendants, Board of Education, its members and officers, answered the complaint and the case proceeded to hearing. Appellants offered evidence and argument, but

no evidence was offered on behalf of the defendants, who are the appellees in this Court.

The evidence on behalf of appellants showed (R. 184-186) that the annuities which the teachers had received upon their retirement under the Miller act were very much less than the salaries which they had previously received as active teachers and principals; the evidence further showed, with respect to the 132 appellants who had voluntarily sought retirement before the effective date of the 1935 amendment but were in fact retired after the effective date, that the previous invariable rule of the Board of Education was to retire teachers immediately upon their written request and the recommendation of the Superintendent showing that they possessed the necessary qualifications (R. 195-255). It was admitted at the trial by counsel for the appellees that the placing of teachers on the retired list was a mere ministerial act on the part of the Board (R. 256).

The federal constitutional questions raised in the complaint were pressed in argument, both in the trial court and before the Supreme Court of Illinois, as was the proposition that the 1935 amendment was not retroactive but applied only to persons who had not retired or sought retirement prior to its passage. The trial judge dismissed the complaint for want of equity, saying (R. 259-261):

> "The plaintiffs' contention here is that if this amendment applies to the plaintiffs the amendment is unconstitutional. • • •
>
> "The court is going to pass on this case from the main issue involved,—I may say the meat of this controversy.
>
> "I am satisfied that a pension right is not a vested right. It is a creature of the legislature. I am of the

opinion that it can be modified, changed or altered by the legislature and the judgment of the court will be, in this injunction suit, that the injunction is denied and the bill dismissed for want of equity."

The Supreme Court of Illinois held that the 1935 amendments were to be applied retroactively and as applicable to appellants and, in sustaining their validity, passed squarely upon the federal constitutional questions. The following excerpts from the opinion show the court's decision upon this issue (R. 266-269):

"They (appellants) bring the cause here on the ground that a constitutional question is involved in the construction given the act by the chancellor.

* * *

"Appellants' complaint is bottomed on the proposition that the rights of teachers retiring or entitled to retire prior to the 1935 amendment were fixed and determined by the law in effect at the time of their retirement or written request for retirement and could not be abolished or reduced by subsequent act of the legislature, and that if the 1935 amendment is to be construed as the Superior Court construed it, it is in violation of * * * the federal constitution * * *, as an attempt to take away vested rights, to take property without due process of law, and to impair obligations of contracts * * *."

"* * * The decisions of this court have uniformly been that pensions are not based on contract but are mere expectancies based upon anticipated continuance of existing law, and that future installments of pensions are not vested property rights. It follows that the State may reduce future installments of pensions without violating the provisions of the State or Federal constitution."

The Supreme Court of Illinois affirmed the decision of the trial court which dismissed the bill, and a final judgment was entered October 27, 1936. A petition for rehearing was filed and was denied on December 4, 1936. The appeal to this Court was allowed by the Chief Justice of the Supreme Court of Illinois on January 18, 1937.

SPECIFICATIONS OF ERROR.

1. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to Appellants did not violate Section 10 Article I of the constitution of the United States as impairing the obligations of contracts.

2. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to Appellants did not violate the Fourteenth Amendment to the Constitution of the United States as taking property without due process of law.

3. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to Appellants did not deprive Appellants of vested contract rights in violation of Section 10 Article I of the Constitution of the United States.

4. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to Appellants did not deprive Appellants of vested and accrued property rights in violation of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of Illinois erred in refusing to hold, as contended by Appellants, that as applied to them the 1935 Amendments to the Miller Act were unconsti-

tutional and void in reducing petitioners' annuities because in violation of Section 10 Article I of the Constitution of the United States.

6. The Supreme Court of Illinois erred in refusing to hold, as contended by Appellants, that as applied to them the 1935 amendments to the Miller Act were unconstitutional and void in reducing petitioners' annuities because in violation of the Fourteenth Amendment to the Constitution of the United States.

7. The Supreme Court of Illinois erred in affirming the decision of the trial court dismissing Appellants' complaint for want of equity.

SUMMARY OF ARGUMENT.

I. This Court has jurisdiction to entertain the appeal. Appellants urged in each of the courts below and urge here, that they each have vested contract and property rights which have been impaired by the 1935 Act in violation of Sec. 10 of Art. I of, and the Fourteenth Amendment to, the Constitution of the United States.

Otis Amendments to School Law, Ill. Session Laws, 1917, p. 730;
Sec. 19, Art. IV of the Illinois Constitution;
Armstrong v. *City of Chicago,* 247 Ill. App. 584;
Porter v. *Loehr,* 332 Ill. 353.

Courts of final jurisdiction in eleven states have sustained the rights of annuitants or pensioners, in situations comparable to that of appellants:

Roddy v. *Valentine,* 268 N. Y. 228, 197 N. E. 260;
Trotzier v. *McElroy,* 182 Ga. 719, 186 S. E. 817;
Mead v. *Acton,* 139 Mass. 341;
O'Dea v. *Cook,* 176 Cal. 659, 169 Pac. 366;
Lage v. *City of Marshalltown,* 212 Ia. 53, 235 N. W. 761;
Renz v. *Hibbing Firemen's Relief Assn.,* 186 Minn. 370, 243 N. W. 713;
Bowler v. *Nagel,* 228 Mich. 434, 200 N. W. 258;
Retirement Board v. *McGovern,* 316 Pa. 161, 174 Atl. 400;
State ex rel. Stafford v. *State Annuity Board,* 219 Wis. 31, 261 N. W. 718;

State v. *Love,* 89 Neb. 149, 131 N. W. 196, 34 L. R. A. New Series 607, Anno. Cases 1912 C 542;
Cobbs v. *Home Ins. Co.,* 18 Ala. App. 206, 91 So. 627 (petition for certiorari denied by Supreme Court of Alabama, 91 So. 922).

Courts in four other states have held such annuities may be reduced:

Head v. *Jacobs,* 150 Ky. 290, 150 S. W. 349;
Mell v. *State,* 130 Ohio State 306, 199 N. E. 72;
Holton v. *Tampa,* 119 Fla. 556, 159 So. 292, 98 A. L. R. 501;
Trammell v. *City of Dallas* (Texas Supreme Court (unreported)).

Appellants have vested rights.

Pennie v. *Reis,* 132 U. S. 464.

The question of the existence and validity of the original contract and of its impairment are to be determined by this Court, which is not foreclosed by the decision below.

New Jersey v. *Yard,* 95 U. S. 104, 113-114;
Coolidge v. *Long,* 282 U. S. 582, 597;
Appleby v. *City of New York,* 271 U. S. 364, 379-380.

A substantial Federal question is presented by the issues in this case, and this Court has jurisdiction on direct appeal under Sec. 237a of Judicial Code (29 U. S. C. Sec. 344).

II. Where, as here, the good faith of a state is involved, any doubts should be resolved in favor of Appellants.

A state should make provision for the payment of its debts and for those of its municipalities. Refusal to do so is dishonor.

Woodruff v. *Trapnall,* 10 How. 190, 206, 207;
Meriwether v. *Garrett,* 102 U. S. 472, 520;

Miller Act 1926, Cahill Ill. Rev. Stat. 1927, Ch. 122, Pars. 269(1), 269(2);

Amendment to the Miller Act, July 12, 1935, Laws of Illinois 1935, p. 1378.

III. The rights of Appellants to the annuities established by the Miller Act are vested contract rights which may not be infringed by subsequent legislation.

Such annuities were expressly made "annuities for life."

Otis Amendments to School Law, Session Laws 1917, p. 730;

Armstrong v. *City of Chicago,* 247 Ill. App. 584;

Miller Act May 19, 1926, Cahill Ill. Rev. Stat. 1927, Ch. 122, Pars. 269(1), 269(2).

Miller Act 1927 Amendment, Cahill Ill. Rev. Stat. 1927, Ch. 122, Par. 269(3);

Amendment to the Miller Act, July 12, 1935, Laws of Illinois 1935, p. 1378.

(1) Each Appellant is a party to a contract with the State of Illinois, and that contract became irrevocably binding upon the State upon retirement or attempted retirement.

New Jersey v. *Yard,* 95 U. S. 104;

Graef v. *Department of Health,* 227 N. Y. S. 82.

The weight of authority sustains Appellants' position.

Dillon on Municipal Corporations, 5th Ed., Sec. 431;

Pennie v. *Reis,* 132 U. S. 464;

Kavanagh v. *Police Pension Fund,* 134 Cal. 50, 66 Pac. 36.

Baird v. *United States,* Devereux' Reports & Digests of Opinions of the U. S. Court of Claims, p. 88.

Conflicting views are held in courts of different states as to whether such a statute results in vested rights, with

the courts of eleven states holding that it does and four states holding that it does not.

The following cases hold that similar statutes resulted in vested contractual rights:

Roddy v. *Valentine,* 268 N. Y. 228, 197 N. E. 260;
Matter of Mahon v. *Board of Education,* 68 N. Y. App. Div. 154;
Klench v. *Board of Pension Commissioners,* 79 Cal. App. 171;
Trotzier v. *McElroy,* 182 Ga. 179, 186 S. E. 817;
Mead v. *Acton;* 139 Mass. 341;
Kavanagh v. *Board of Police Commissioners,* 134 Cal. 50, 66 Pac. 36;
O'Dea v. *Cook,* 176 Cal. 659, 169 Pac. 366;
Casserly v. *City of Oakland,* 6 Cal. (2nd) 64, 56 Pac. (2d) 237;
Lage v. *City of Marshalltown,* 212 Ia. 53, 235 N. W. 761;
Renz v. *Hibbing Firemen's Relief Assn.,* 186 Minn. 370, 243 N. W. 713;
State ex rel. Gorczyca v. *City of Minneapolis,* 174 Minn. 594, 219 N. W. 924;
Bowler v. *Nagel,* 228 Mich. 434, 200 N. W. 258;
Fellows, Atty. General v. *Connolly,* 193 Mich. 499, 160 N. W. 581;
Retirement Board v. *McGovern,* 316 Pa. 161, 174 Atl. 400;
State ex rel. Stafford v. *State Annuity Board,* 219 Wis. 31, 261 N. W. 718;
State v. *Love,* 89 Neb. 149, 131 N. W. 196, 34 L. R. A. (N. S.) 607, Anno. Cases 1912 C. 542;
Cobbs v. *Home Ins. Co.,* 18 Ala. App. 206, 91 So. 627 (petition for certiorari denied by Supreme Court of Alabama, 91 So. 922).

A minority of four states reach the opposite result.

Head v. *Jacobs*, 150 Ky. 290, 150 S. W. 349;
Mell v. *State*, 130 Oh. St. 306, 199 N. E. 72;
Holton v. *Tampa*, 119 Fla. 556, 159 So. 292, 98 A. L. R. 501;
Trammell v. *City of Dallas* (Supreme Court of Texas, decided Feb. 10, 1937, not reported).

Two New York cases have held such rights as vested in carefully reasoned opinions.

Roddy v. *Valentine*, 268 N. Y. 228, 197 N. E. 260;
Matter of Mahon v. *Board of Education*, 68 N. Y. App. Div. 154.

2. A confused state of the law of Illinois results from the decision in this case.

Two recent Illinois cases had held pensions were vested.

Porter v. *Loehr*, 332 Ill. 353;
DeWolf v. *Bowley*, 355 Ill. 530.

Earlier cases had reached similar holdings.

Hughes v. *Traeger*, 264 Ill. 612;
People v. *Abbott*, 274 Ill. 380;
Section 19, Article IV of Illinois Constitution.

An earlier line of cases had held pensions to be gratuities:

Eddy v. *Morgan*, 216 Ill. 437;
Ryan v. *Foreman*, 262 Ill. 175;
Pecoy v. *Chicago*, 265 Ill. 78;
Stiles v. *Retirement Board*, 281 Ill. 636;
People v. *Retirement Board*, 326 Ill. 579;
People v. *Hanson*, 330 Ill. 79;
McCann v. *Retirement Board*, 331 Ill. 193.

The holdings in these gratuity cases are in conflict with

Roddy v. *Valentine*, 268 N. Y. 228, 197 N. E. 260;
Dismuke v. *United States*, 297 U. S. 167.

Another Illinois case holding a pension vested was *Miner* v. *Stafford*, 326 Ill. 204.

This Court should apply the rule stated in *Pease* v. *Peck*, 18 How. 595, to re-establish the better reasoned rule in Illinois.

3. Where, as in this case, there is ample consideration for a contract between teacher and state, the presence or absence of teacher contributions is immaterial.

Hughes v. *Traeger*, 264 Ill. 612;
Pennie v. *Reis*, 132 U. S. 464;
Roddy v. *Valentine*, 268 N. Y. 228, 197 N. E. 260;
Dillon on Municipal Corporations, 5th Ed., Secs. 430, 431.

The Illinois courts have not applied any rule requiring contributions.

DeWolf v. *Bowley*, 355 Ill. 530;
People v. *Abbott*, 274 Ill. 380.

Other state courts have held them unnecessary in private pension systems.

Schofield v. *Zion's Co-operative Mercantile Institution*, 85 Utah 281, 39 Pac. (2d) 342, 96 A. L. R. 1083;
Psutka v. *Michigan Alkali Co.*, 274 Mich. 318, 264 N. W. 385.

Non-contributory pensions are reflected in lower active salaries.

Report of Illinois Pension Laws Commission of 1916, pages 282, 22, 24, 30, 32, 49, 273.

ARGUMENT.

I.

THIS COURT HAS JURISDICTION TO ENTERTAIN THE APPEAL.

In view of the order of this Court entered March 8, 1937 postponing further consideration of the question of jurisdiction until the hearing upon the merits, it becomes necessary to re-examine the jurisdictional aspects of this case.

The Federal questions urged are the impairment of contract rights contrary to Sec. 10 of Article I of the Constitution of the United States and the taking of property without due process of law in violation of the Fourteenth Amendment to that Constitution. The property rights are contract rights which had their origin in the Miller Act of 1926 and its 1927 Amendment, providing for annuities for life for all teachers and principals in the Chicago school system when they should reach a certain age and be retired, either voluntarily or by operation of law. These rights vested as to these appellants at the times when they retired under the provisions of the statute or, as to 132 of them, when they sought retirement under the statute and nothing remained to consummate their change of position except a purely ministerial act on the part of the Board of Education of Chicago.

Assuming for the moment the existence of a contract to pay retirement annuities, there can be no question that such contract and the rights which flowed from it were im-

paired by the 1935 amendment to the Miller Act which cut the annuities to the yearly sum of $500.00 for life. This 1935 Amendment was in direct conflict with the rights of Appellants which, if they had become vested upon retirement, are entitled to the protection of the Federal Constitution.

From its inception, the case has proceeded upon the theory that constitutional rights were endangered and infringed. It was so stated in express language in the complaint (R. 40). The issue then raised was squarely met by the trial court in its oral opinion (R. 259-261) and by the Supreme Court of Illinois, 364 Ill. 547 (R. 265-272). There is no doubt upon this record that the Federal question has been properly preserved.

It is important, in determining whether the Federal question is substantial, to note the position of Appellants before and after the passage of the Miller retirement act of 1926, providing for compulsory retirement, and its 1927 amendment providing for voluntary retirement. All of the Appellants were teachers and principals in the Chicago schools, actively engaged in teaching, with long years of service to their credit. They were serving under a school law which had been clarified in 1917 by the passage of the so-called Otis Amendments. These amendments to the law purported to give them permanency of teaching tenure, subject to removal for cause and after trial and hearing. (See the text of the Otis Amendments in the Appendix, pp. 59-61, with respect to tenure and removal.)

The Superintendent of Schools and the Board of Education of Chicago, as well as the teachers, construed the Otis Amendments as giving the teachers permanent positions (R. 54). The Appellate Court of Illinois in the only

case on the subject so held. *Armstrong* v. *City of Chicago*, 247 Ill. App. 584.

While the Appellants were still active in the discharge of their teaching duties, the Miller Act of 1926 was passed and was amended the following year to provide for both compulsory retirement at certain ages between 70 and 75 and voluntary retirement at 65 to 70. This was in response to the recommendation of the Chicago superintendent of schools and Board of Education and constituted an offer to pay an annuity "for life" to each teacher retired under the Act, in lieu of the salaries paid for what were considered permanent teaching positions.

The purpose of the Miller Act was two-fold. It cleared the school system of elderly teachers for whose removal no statutory cause existed, and it stabilized employment by holding out an inducement for continued service in the system by rewarding those who had remained as teachers in Chicago rather than transferring to other school systems which might offer higher pay but not the same ultimate security. It purported to be and was an offer which was accepted by these Appellants at various times between 1926 and 1935. By their acceptance of the offer, they waived what they and the Board of Education and the State considered to be permanent tenure and gave up larger salaries and passed to a retired status, subject to call for advice and consultation. Thus each and every one of appellants radically changed his or her position and emoluments in good faith and upon the strength of the offer contained in the Miller Act. This was the acceptance of an offer to a contract and should lead this Court to consider the validity and binding force of the contract then established.

It will doubtless be suggested by the Appellees in this case that the Miller Act provided no more than an additional gratuity for services rendered by the Appellants in the past. This suggestion is without force and runs directly contrary to the express provisions of Sec. 19 of Article IV of the Constitution of the State of Illinois which forbids future compensation for past services in the following words:

> "The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, * * *" .

See the construction of this clause of the Constitution in the case of *Porter* v. *Loehr*, 332 Ill. 353. This Court will not hold that the legislators in enacting the Miller Act violated their own constitution.

Instead of compensation for past services by way of gratuity, it seems clear to us that the annuities for which Appellants qualified under the Miller Act were supported by one or more of the following elements of consideration: (1) They were to insure future satisfactory service in the Chicago schools by teachers already in that employment or who might thereafter enter it; (2) the annuities were promised as consideration for giving up active teaching positions, with greater compensation, in the case of those whom it was thought desirable to replace by younger teachers; (3) the annuities were compensation for services to be rendered by the teachers after the passage of the act, which was withheld until a future but determinable date based upon the age of the teacher.

It may be of interest to the Court to know that the following courts of final jurisdiction in eleven states have

sustained the rights of annuitants or pensioners, in situations comparable to that of appellants in this case, as vested and contractual and beyond the power of any legislative impairment by subsequent legislative action:

Roddy v. *Valentine,* 268 N. Y. 228, 197 N. E. 260;
Trotzier v. *McElroy,* 182 Ga. 719, 186 S. E. 817;
Mead v. *Acton,* 139 Mass. 341;
O'Dea v. *Cook,* 176 Cal. 659, 169 Pac. 366;
Lage v. *City of Marshalltown,* 212 Ia. 53, 235 N. W. 761;
Renz v. *Hobing Firemen's Relief Assn.,* 186 Minn. 370, 243 N. W. 713;
Bowler v. *Nagel,* 228 Mich. 434, 200 N. W. 258;
Retirement Board v. *McGovern,* 316 Pa. 161, 174 Atl. 400;
State ex rel. Stafford v. *State Annuity Board,* 219 Wis. 31, 261 N. W. 718;
State v. *Love,* 89 Neb. 149, 131 N. W. 196, 34 L. R. A. (N. S.) 607, Anno. Cases 1912 C 542;
Cobbs v. *Home Ins. Co.,* 18 Ala. App. 206, 91 So. 627 (petition for certiorari denied by Supreme Court of Alabama, 91 So. 922).

The Courts of last resort in two other states have held such rights to be neither vested nor contractual but gratuities or bounties springing from the graciousness of the sovereign and terminable at will by future legislation:

Head v. *Jacobs,* 150 Ky. 290, 150 S. W. 349;
Mell v. *State,* 130 Ohio State 306, 199 N. E. 72.

The Supreme Court of the State of Florida has held that the rights of such annuitants or pensioners are vested and therefore can not be entirely destroyed but that such vesting does not prevent the reduction by a later law passed

after the vesting if such a reduction is reasonable in amount and does not reduce the pension to a mere nominal amount.

Holton v. *Tampa,* 119 Fla. 556, 159 So. 292, 98 A. L. R. 501.

In the decision of the Supreme Court of Texas in the case of *Trammell* v. *City of Dallas,* not yet reported, it is held that there are contract rights but that they are subject to impairment by future legislation so as to modify any rights granted under laws passed.

The decision of the New York Court of Appeals in *Roddy* v. *Valentine, supra,* and the several holdings of the California Supreme Court, as well as some of the other State courts above listed supporting the vesting of contract rights, are based in part upon the decision of this Court in *Pennie* v. *Reis,* 132 U. S. 464, and the language used by this Court in that case (p. 471):

> "Until the particular event should happen upon which the money, or a part of it, was to be paid, there was no vested right in the officer to such payment."

The law is well settled that where a claim is made to this Court that contract rights established by statute of a state (The Miller Act of 1926 and 1927) have been impaired by subsequent statutory enactment (The 1935 amendments to the Miller Act) the question of the existence and validity of the original contract and of its impairment are to be determined by this Court, which is not foreclosed by the decision below.

New Jersey v. *Yard,* 95 U. S. 104, 113-114;
Coolidge v. *Long,* 282 U. S. 582, 597;
Appleby v. *City of New York,* 271 U. S. 364, 379-380.

There is, we submit, a substantial Federal question properly presented in this case which should engage the attention of the Court and should be decided by it in the exercise of its regular appellate jurisdiction under Sec. 237 (a) of the Judicial Code (29 U. S. C., sec. 344).

The succeeding sections of the argument will deal more at length with the matters suggested but not argued in detail herein.

II.

WHERE AS HERE THE GOOD FAITH OF A STATE IS INVOLVED, ANY DOUBTS SHOULD BE RESOLVED IN FAVOR OF APPELLANTS.

A state can no more impair by legislation the obligation of its own contracts, than it can impair the obligation of the contracts of individuals. We have the right to demand that the action of a sovereign state be characterized by a more scrupulous regard for justice and a higher morality than is to be expected in ordinary transactions between individuals. *Woodruff* v. *Trapnall,* 10 How. 190, 206, 207. It is of the highest importance that a state should make provision not merely for the payment of its own indebtedness but for that of its different municipalities. Refusal to do so is dishonor. *Meriwether* v. *Garrett,* 102 U. S. 472, 520.

This Court expressed sentiments like these many years ago. They are equally true today. If individuals dealing with their government are bound to turn square corners, the obligations involved are co-equal and the government, whether Federal, state or municipal, is bound by the principles of fair dealing when once its word has been passed and accepted.

The parallel between the words of the Miller Act of 1926-1927 and its 1935 amendment is plain and these acts as now

construed by the Illinois courts reflect discredit upon the State.

The 1926 act, under which Appellants claim that their rights have vested, and the 1935 act, which seeks to destroy those rights, read, respectively:

1926 Act	1935 Act
"Each person so retired from active service * * * shall be paid the sum of $1500 *annually and for life* from the date of such retirement."	"Each person so retired from service shall be paid the sum of $500 *annually and for life* from the date of such retirement."

Change the words *for life* in the 1926 act to read *for nine years* and the two acts become harmonious. Leave the words as they were enacted by the legislature and the 1935 Act shows bad faith. The question obviously arises whether the words "for life" in the new statute have any more significance than have been given them in the old statute as construed by the Illinois Supreme Court's decision in this case.

Had the Court below held, as contended by Appellants, that the 1935 amendment was not retroactive in effect and therefore did not apply to persons already retired under the old statute, no such conflict would have arisen. Such a construction would, we contend, not only have been a proper one of the wording of the Act, but would also have avoided any breach of good faith on the part of the State.

It is one thing to talk about legal concepts of consideration or lack of consideration, contracts, gratuities, offers and acceptances, pensions or annuities. It is another thing to try to explain to 945 school teachers that they did

not receive lifetime annuities when they retired from the Chicago schools after many years of service. To them the words of the first act above quoted are plain and can mean only one thing—a solemn covenant that if they performed certain acts, the state would do its promised part as long as they lived. We see no legal reason why they are wrong but if there be any, it should yield to the impelling force of a public policy that must always insist that a state may not deliberately mislead its citizens to their detriment.

This Court, as the one of last resort, may properly reverse the judgment of the court below, both as a matter of law and as a matter of that public policy which underlies all reasonable rules of law. The argument upon the law which follows should demonstrate the soundness of Appellants' contentions that their constitutional rights have been infringed.

III.

THE RIGHTS OF APPELLANTS TO THE ANNUITIES ESTABLISHED BY THE MILLER ACT ARE VESTED CONTRACT RIGHTS WHICH MAY NOT BE INFRINGED BY SUBSEQUENT LEGISLATION.

No authority need be cited for the proposition that an act of a state legislature which reduces an annuity of $1500 per year "for life" to $500 per year "for life", thereby impairs the right of the annuitant to receive $1500 in each remaining year of his life. The act of July 12, 1935 accomplishes this result. Its provisions are printed in full in the appendix to this brief, pages 68-69.

The Appellants have the burden of showing that their rights to receive $1500 per year for life (or other sums ranging from $1000 to $1500, depending upon retirement

age) are bottomed upon valid and binding contracts; and that these contract rights are entitled to the protection afforded in proper cases by the Constitution of the United States, as a last resort and after other means of defense have been exhausted.

The record shows the urgent need felt by the Superintendent of Schools and Board of Education of Chicago for an adequate retirement or pension plan which would clear the system of elderly teachers of long service but with diminished physical and mental vigor (R. 51). The record shows that 70 was considered by these experts in education to be the maximum age beyond which a teacher should not be allowed to teach and that 65 was the age at which teachers should be encouraged to retire voluntarily (R. 64-68); and that room must be made for younger persons in the Chicago Schools with provision for their ultimate security in retirement (R. 65).

Bearing in mind these factors, which seemed of the first importance to the Superintendent and the Board, and bearing in mind also the fact that the teachers were assured by law and court decisions* of permanency in their positions, subject only to removal for cause, the Superintendent and the Board determined upon a plan of action. They drafted and recommended to the legislature and secured the passage of an act which accomplished their purposes (R. 51-53) and was yet attractive enough to appeal to the teachers, to whom their recommendations were broadcast (R. 26, 131).

This act was the Miller Act of May 19, 1926, with its 1927 amendment (Appendix, pages 62, 64). By its terms a

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*The amendments of 1917 to the general school law, known as the Otis Amendments (See Appendix, page 59, and *Armstrong* v. *City of Chicago*, 247 Ill. App. 584.

teacher might voluntarily retire at ages 65 to 70. Compulsory retirement began at 75 in the first year of the Act and was progressively reduced until in the fifth year and thereafter it became effective at 70. All those who retired at 70 or more were to receive *"$1500 annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes"* and actually did receive that amount in semi-monthly payments until July, 1935. All who voluntarily retired at 65 and over were to receive $1000 to $1500 as *"annuities for life,"* and did actually receive those amounts in semi-monthly payments until July, 1935. There were other provisions with respect to length of active service prior to retirement and duties of consultation and advisory service to be undertaken by the annuitants upon request.

These 945 appellants looked upon the Miller Act and found it good. Those retired by the compulsory action of the statute accepted the situation and did not protest the loss of permanent teaching positions. The others retired voluntarily or sought so to retire. Details of the different classes with their ages at their respective retirements are shown in the statement of facts, *supra*, page 8. Doubtless, all of the appellants believed, and we think rightly, that the statute offered each of them a solemn and binding contract "for life" which they had accepted.

Whether this Miller Act of 1926 and 1927 offered such a contract as these teachers believed and whether their rights after they had retired under it are secure from later legislative attack is the issue now before this Court.

1. Each appellant is a party to a contract with the State of Illinois, and that contract became irrevocably binding upon the State upon retirement or attempted retirement.

The general rule with respect to the legislative offer and individual acceptance of a contract is tersely stated by Mr. Justice Miller in *New Jersey* v. *Yard*, 95 U. S. 104, 113:

> "It has become the established law of this Court that a legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or corporations, become contracts between them and the State within the protection of the clause referred to of the Federal Constitution."

We need not argue and do not argue that the passage of the Miller Act created a contract or any vested rights. It was no more than an offer requiring an act or change of position on the part of the offeree to make it binding. It was the act of retiring after all the conditions had been fully complied with, while the offer was open and the statute in force, which ripened the offer into a contract. For those 132 appellants who sought to retire but were prevented by the Board of Education, the legal effect is the same since it is admitted in this record that the action of the Board in approving retirement applications was merely ministerial, where as here, the superintendent had certified that the applicant possessed the qualifications to retire (R. 75, 78 and 256).

Each party to the contract reaped a benefit and sustained a detriment which constituted ample consideration. The State obligated itself to pay an annuity which was a claim against all money derived from the general tax levy for educational purposes. The obligation was complete and

unequivocal, since no reservation or right to withdraw, either express or implied, was contained in the statute. The State benefited upon several grounds. It saved a large part of the salaries of teachers drawing maximum amounts earned after long service,—at one stroke it made places for younger lower salaried teachers and eliminated from active teaching the elderly men and women, both of which results were deemed desirable; and it was able to offer all teachers in the system a substantial inducement for long service with a consequent reduction in teacher turn-over.*

The teacher who retired under the Miller Act gave up a permanent teaching position and a salary in most cases largely in excess of the promised annuity. See the testimony of Reynolds, whose teaching salary was $4800 (R. 184); Keen, $4000 (R. 185); Armstrong, $6500 (R. 186); Dodge, $6300 (R. 187). The teacher gained old age security and an annuity for life which provided an income sufficient for frugal living.

A recital of the consideration which actually passed between the State and the appellants should be sufficient to establish the existence of vested contract rights which may not be impaired.

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*See the statement in *Graef* v. *Department of Health*, 227 N. Y. S. 82, that

> "It may well be that in contemplation of entering public service of this character, the employee considers the outlook of the anticipated pension after proper service as one of the inducements to enter and to persuade him to continue, declining, perhaps, more attractive offers from other sources which might be afforded."

The weight of authority sustains Appellants' position.

The best statement of the whole problem by a recognized authority is that of Judge Dillon in his work on Municipal Corporations, 5th Edition, Sec. 431, where it is said:

> "Until the particular event should happen upon which the money, or a part of it, is to be paid, there is no vested right in the officer to such payment. His interest in the fund is, until then, a mere expectancy created by the law and liable to be revoked or destroyed by the same authority. But when the particular event has happened upon which the money or a part of it is to be paid, the beneficiary of the pension under the pension system acquires, it has been held, a vested right and it is not competent for the legislature or any other authority to deprive him of that vested right. But the existence of a vested right is dependent upon statutory provisions conferring the pension *without qualification and without any reserved right* to terminate it. If the statute reserves the power to the local authorities to discontinue the pension in their discretion, the beneficiary does not acquire a vested right in it."

Dillon cites as authority for his statement regarding vested rights, the cases of *Pennie* v. *Reis,* 132 U. S. 464, and *Kavanagh* v. *Police Pension Fund,* 134 Cal. 50, 66 Pac. 36. In the latter case, the widow of a policeman sued for benefits under an Act in force at the time of the death of her husband but which was later amended. The Court held that the widow's right to recover was absolute, saying, page 52:

> "Respondent's right therefore became vested while the statute under which she claims was in full force,

and it was not competent for the legislature, or any other authority, to deprive her of that vested right. *Pennie* v. *Reis*, 132 U. S. 471."

In *Pennie* v. *Reis*, this Court had under consideration a police pension act in California. The act provided for the payment of a lump sum of $1000 to the estate of any policeman who died while in the service. It was enacted April 1, 1878, and repealed March 4, 1889. Nine days after the repeal, the particular policeman died and his administrator sought to collect the benefit provided by the former act. This Court held (page 471) that the pension fund "was entirely at the disposition of the government, until, by the happening of one of the events stated—the resignation, dismissal, or death of the officer—the right to the specific sum promised became vested in the officer or his representative. * * * Until the particular event should happen upon which the money or a part of it was to be paid, there was no vested right in the officer to such payment. His interest in the fund was, until then, a mere expectancy created by the law, and liable to be revoked or destroyed by the same authority."

Dillon on Municipal Corporations and the majority of states that have passed upon the question, have construed *Pennie* v. *Reis* to hold, at least inferentially, that once the "particular event" has happened upon which the money is to be paid, rights are vested and contractual and may not thereafter be disturbed or impaired by any subsequent act of a state legislature.*

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*Compare also the early Federal case under the Fifth Amendment of *Baird* v. *United States*, Devereux' Reports and Digests of Opinions of the U. S. Court of Claims, p. 88. Congress on January 17, 1781, had adopted a resolution providing that officers reduced should be enentitled to half pay for life. A commissioned surgeon,

To this effect are the cases of

Roddy v. *Valentine*, 268 N. Y. 228, 197 N. E. 260;
Matter of Mahon v. *Board of Education*, 68 N. Y. App. Div. 154;
Klench v. *Board of Pension Commissioners*, 79 Cal. App. 171;
Trotzier v. *McElroy*, 182 Ga. 719, 186 S. E. 817;
Mead v. *Acton*, 139 Mass. 341;
Kavanagh v. *Board of Police Commissioners*, 134 Cal. 50, 66 Pac. 36;
O'Dea v. *Cook*, 176 Cal. 659, 169 Pac. 366;
Casserly v. *City of Oakland*, 6 Cal. (2nd) 64, 56 Pac. (2d) 237;
Lage v. *City of Marshalltown*, 212 Ia. 53, 235 N. W. 761;
Renz v. *Hibbing Firemen's Relief Assn.*, 186 Minn. 370, 243 N. W. 713;
State ex rel. Gorczyca v. *City of Minneapolis*, 174 Minn. 594, 219 N. W. 924;
Bowler v. *Nagel*, 228 Mich. 434, 200 N. W. 258;
Fellows, Atty. General v. *Connolly*, 193 Mich. 499, 160 N. W. 581;
Retirement Board v. *McGovern*, 316 Pa. 161, 174 Atl. 400;
State ex rel. Stafford v. *State Annuity Board*, 219 Wis. 31, 261 N. W. 718;
State v. *Love*, 89 Neb. 149, 131 N. W. 196, 34 L. R. A. (N. S.) 607, Anno. Cases 1912 C 542;

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then serving in the United States Army, was so reduced on March 29, 1781. The Court of Claims, held, p. 89, that he became entitled to this half pay

> "as a right founded upon a contract with Congress, which no subsequent legislation by Congress could, upon any principle of justice, or legal reasoning, take away from him."

Cobbs v. *Home Ins. Co.*, 18 Ala. App. 206, 91 So. 627 (petition for certiorari denied by Supreme Court of Alabama, 91 So. 922).

A minority of States have held that such rights as are here involved are neither vested nor contractual, but are gratuities or bounties.

Head v. *Jacobs*, 150 Ky. 290, 150 S. W. 349;
Mell v. *State*, 130 Oh. St. 306, 199 N. E. 72.

Two other states hold that they are vested but may be reduced by the legislature.

Holton v. *Tampa*, 119 Fla. 556, 159 So. 292, 98 A. L. R. 501;
Trammell v. *City of Dallas* (Supreme Court of Texas, decided Feb. 10, 1937, not reported);

The reasoning of the courts of the minority jurisdictions would hardly apply in Illinois where the State has been expressly forbidden by the terms of its Constitution to grant additional compensation for past services (in reality, gratuities). Sec. 19 of Art. IV of the Illinois Constitution, and see also *Porter* v. *Loehr*, 332 Ill. 353, construing the same.

The latest case sustaining a retirement annuity as a vested and contract right is that of *Trotzier* v. *McElroy, et al., Trustees*, 182 Ga. 719, 186 S. E. 817, decided by the Supreme Court of Georgia July 3 and rehearing denied July 17, 1936. Trotzier, a fireman injured in course of duty, had been retired and placed on a pension of $100.00 per month. Thereafter, under a 1935 amendment to the Pension Law, his annuity was reduced to $75.00 a month. The Georgia Supreme Court in its opinion states (page

723) that "the better view of the subject is to treat the city's agreement to pay a pension as a contract based on considerations flowing from both parties and giving the plaintiff in error a vested right which, under art. 1, sec. 10, par. 1 of the Constitution of the United States cannot be impaired." On page 724 of the opinion the court quotes from *Roddy* v. *Valentine, supra,* and then holds, "If it be true that the right arising from the contract becomes vested on the fulfillment of the contingency provided, * * * then it necessarily follows that subsequent legislation, such as the act of 1935, would impair the obligation to pay the pensioner involved in this case."

The reasoning of the New York cases.

We are fortunate in that the Court of Appeals of New York has recently passed upon the question in an authoritative and carefully reasoned opinion. In *Roddy* v. *Valentine,* 268 N. Y. 228, 197 N. E. 260, decided July 11, 1935, the facts were these:

Roddy was retired in 1924 under the police pension provisions of the Charter of Greater New York from the Police Department of that city upon an annual pension. After his retirement, he was employed as Chief of Police of the City of Long Beach, New York. The laws of 1932 added to the civil service law applicable, a new section by which it was provided that the pensions should be suspended during any employment of the pensioner by any municipal corporation or political subdivision of the State of New York. Under this Act the payment of Roddy's pension was suspended for the period he was employed as Chief of Police of Long Beach. He brought suit to recover the amount withheld and secured a judgment which was

unanimously affirmed by the Court of Appeals. The reasoning of the Court follows (pages 231-2):

"The sole question is whether section 32 of the Civil Service Law affects the plaintiff's right to his pension during the time he was employed by the city of Long Beach.

"The concept embodied in the word pension has developed far beyond the original idea of a bounty or gratuity, 'springing from the appreciation and graciousness of the sovereign,' granted in recognition of meritorious past services. One has but to examine the statutes of our own State (e. g., Civil Service Law, arts, 4, 5 and 6; Education Law (Cons. Laws, ch. 16), art. 43-B) to appreciate the extent of the development. Necessarily there has come with that development changed theories relating to the nature of the rights and obligations under pension statutes both of civil servants and of the government. * * * Where the statutory scheme creates a fund wholly or largely out of public moneys, the interest of the member down to the point where there has been compliance with all precedent conditions and the award has been or as of right should have been made, can hardly be deemed contractual. * * * But whatever its legal nature may be, there seems to be no doubt that it is subject to change or even to revocation at the will of the Legislature. (*People ex rel. Devery* v. *Coler*, 173 N. Y. 103; *Pennie* v. *Reis, supra; Matter of Friel*, 101 App. Div. 155; affd., 181 N. Y. 558).

"*Where, however, the statutory conditions for retirement existing when application is made have been met and the award of the pension or benefit has been made, or as of right should have been made,* (*Matter of O'Brien* v. *New York State Teachers' Retirement*

Board, 215 App. Div. 220; affd., 244 N. Y. 530), *the interest becomes vested and takes on the attributes of a contract, which in the absence of statutory reservations, may not legally be diminished or otherwise adversely affected by subsequent legislation.* (*Pennie* v. *Reis, supra; People ex rel. Mulvey* v. *York,* 41 App. Div. 419; *Klench* v. *Board of Pension Fund Comrs.,* 79 Cal. App. 171, and cases therein cited.) All the reasons of policy which underlie and justify pension legislation in general—the efficiency and morale of departmental service, social protection and social justice—support the conclusion of the last cited and many other similar cases and afford adequate ground for the decisions. *We need not strain for a legal classification.*" (Italics ours.)

Of interest also is the early Appellate Division's case of *Matter of Mahon* v. *Board of Education,* 68 N. Y. App. Div. 154 (affirmed 171 N. Y. 263), upon which Dillon relies and which seems to have had a considerable influence upon his reasoning. A teacher's pension act was involved in the *Mahon* case and the question to be decided by the Court was whether teachers who had retired before the Act became effective could be included within its provisions and be entitled to its benefits. This the Court held could not be done and that, as applied to such teachers, the Act was unconstitutional under a constitutional provision against gratuities similar to that in Illinois. The opinion is chiefly interesting because of its suggestion that the annuities provided by the Act were in the nature of compensation for services rendered before retirement and amounted to pay withheld to induce faithful service. The important portion of the opinion follows (page 156):

"Such pension laws, so called, are now quite common, both in State and Federal legislation. These

annuities, after the expiration of the period of active service, are not gratuities, but are in the nature of compensation for the services previously rendered for which full and adequate compensation was not received at the time of the rendition of the services. In other words, it is in effect pay withheld to induce long-continued and faithful service. Such statutes are designed to benefit the public service in two ways: *First*, by encouraging competent and faithful employees to remain in the service and refrain from embarking in other vocations; and, *second*, by retiring from the public service those who, by devoting their best energies for a long period of years to the performance of duties in a public office or employment have, by reason thereof or of advanced age, become incapacitated from performing the duties as well as they might be performed by others more youthful or in greater physical or mental vigor. Provision is thus made for the partial support of such teachers when their retirement without such provision was deemed inequitable, and but for such provision doubtless would not be enforced. These and other considerations will sustain such legislation from successful attack where the Legislature has limited the application of the law to those who are in the public service or employ at the time of its enactment. As to those, however, who have passed out of the public service at a time when no such obligation had been assumed toward them, retroactive legislation of this character becomes obnoxious to the Constitution. In such case the annuity becomes a mere gratuity, the giving of which is prohibited by section 10 of article 8 of the Constitution. (*Matter of Jensen*, 44 App. Div. 509; *Matter of Chapman*, 57 *id.* 583; affd., 168 N. Y. 80.)"

This case has also had a marked effect upon some of the more important Illinois decisions which will be discussed hereafter.

The reasoning of these two New York cases is of such force and authority in a field which has suffered from careless thinking, that they are entitled to far more than their numerical weight. Nothing is said in either of the quotations from them which cannot be applied with equal force to the position of the Appellants in the present case.

The particular kind of consideration is not important when it is apparent that all the elements of a valid contract exist.

In Point I of this Brief three elements, any one of which constituted consideration for a contract, were suggested. They were that the annuities for which appellants qualified were granted (1) to insure future satisfactory service in the Chicago schools by teachers already in that employment or who might thereafter enter it—by the reduction of turnover; (2) to induce the giving up of active teaching positions carrying larger compensation by those whom it was thought desirable to replace by younger teachers; and (3) as compensation for services to be rendered, which compensation was to be withheld until a future but determinable date based upon the age of the teacher.

We have heretofore demonstrated that adequate consideration passed from state to teachers and from teachers to state when appellants retired under the Miller Act. It is not necessary that any one of the theories stated in the preceding paragraph or found elsewhere be adopted to the exclusion of the others. All find support in the facts and the cases. *Matter of Mahon* v. *Board of Education, supra,* suggests the idea that an annuity is really "pay withheld."

Other cases incline toward the change of position theory and the benefits to be derived by stabilizing employment. It is pointed out in the Nebraska case, *State* v. *Love, supra,* that the service period before as well as after the passage of a pension act is to be counted in determining the necessary qualifications for retirement and that the fact that some individuals earned their pensions by serving a comparatively short time after the passage of the act, whereas others had to continue in service for a greater period, did not operate to void the legislation.

The best rule seems to be that laid down in *Roddy* v. *Valentine, supra,* that where the elements of a contract are present, the Court *"need not strain for a legal classification."* The same case disposes of any controversy which might arise over the word "pension" as synonymous with "gratuity." It is clear that whether the sums which appellants claim are denominated "annuities," as the Illinois Act speaks of them, or "pensions," as the appellees would prefer to call them, the ultimate appraisal of their true nature and legal significance must rest upon facts and not names.

2. The confused state of the law in Illinois as a result of the decision in this case.

Until the decision of the Supreme Court of Illinois in the instant case, the Illinois law appeared to be settled that an annuity or pension was not a gratuity but, upon the resignation or retirement of the public servant, vested a right in him which he could enforce by a proceeding in court.

There was a line of earlier cases which overlapped some of the earlier vested interest cases and announced the contrary theory, but these were regarded as finally overruled by the decisions in *Porter* v. *Loehr*, 332 Ill. 353, (1928) and *DeWolf* v. *Bowley*, 355 Ill. 530, (1934). It is all the more

surprising, therefore, that the Supreme Court of Illinois, which had apparently overcome its vacillations and decided to adhere to a consistent and supportable theory, should suddenly have departed from the principles announced in its own later decisions and should have stated in this case (364 Ill. 547, 552) that:

> "The decisions of this court have uniformly been that pensions are not based on contract but are mere expectancies based upon anticipated continuance of existing law, and that future installments of pensions are not vested property rights."

The growth of the law in Illinois on retirement annuities and pensions may be traced by a survey of the more important cases.

In *Hughes* v. *Traeger*, 264 Ill. 612 (1914), a stenographer working under the civil service law in Chicago brought suit to declare unconstitutional a law creating a pension fund for his benefit and for the benefit of others in his class. He objected particularly to the deduction of $2.00 per month from his wages of $80.00. In discussing his bill, the court held that he had no property right in unearned salary and no standing in court and that there was nothing to prevent the state from disposing of the pension fund as it saw fit prior to his retirement. The court, however, cited Dillon on Municipal Corporations upon the subject of annuities and *Pennie* v. *Reis*, 132 U. S. 464, upon the proposition, page 467, that:

> "A change in the disposition of the fund would not, however, violate any right of the complainant, for until the happening of the event designated by the statute for its distribution he has no vested right in the fund but only an expectancy created by the law, which the law may revoke or destroy:".

People v. *Abbott*, 274 Ill. 380 (1916), was a suit by two former policemen of the City of Quincy, to compel the city authorities to set up a pension fund provided for by the Police Pension Fund Act of 1909. Both men were serving when the Act was passed and both later retired. They sought both creation of and participation in the fund and showed their qualifications. The act provided that each prospective annuitant should contribute to the fund but it does not appear that these individuals had ever made any such contribution.

The city raised the objection that the act was unconstitutional as in violation of Sec. 19 of Article IV of the Illinois Constitution, reading:

> "The general assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim, or part thereof, hereafter created against the state under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void; provided, that the general assembly may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion."

The Court in *People* v. *Abbott* held (pages 384-385) that:

> "A system of pensions to municipal officers and employees injured or disabled while on duty or retiring after a term of service has gradually arisen and is being extended during recent years. The constitutionality of statutes establishing such pension system is sustained upon the ground that 'these annuities • • • are in the nature of compensation for services

previously rendered for which full and adequate compensation was not received at the time of the rendition of the services. It is, in effect, pay withheld to induce long-continued and faithful service, and the public benefit accrues in two ways:' by encouraging competent employees to remain in the service, and by retiring from the public service those who have become incapacitated from performing the duties as well as they might be performed by younger or more vigorous men. (1 Dillon on Mun. Corp.—5th ed.—sec. 430.) This court in *Hughes* v. *Traeger,* 264 Ill. 612, upheld the constitutionality of a pension act and approved the doctrine just quoted from Dillon. Such pensions generally are not considered donations or gratuities. The rule in the majority of jurisdictions is, that the legislature has power to require municipalities to pension their employees and raise the funds for that purpose. (5 McQuillin on Mun. Corp. sec. 2422; 1 Dillon on Mun. Corp.—5th ed.—secs. 105, 430; *State* v. *Love,* 34 L. R. A. (N. S.) 607, and note; also 24 Ann. Cas. 542, and note; *Trustees of Firemen's Fund* v. *Roome,* 93 N. Y. 313; *Commonwealth* v. *Walton,* 182 Pa. St. 373.) Some State courts have held such laws unconstitutional, the leading case setting forth this position being *State* v. *Ziegenhein,* 144 Mo. 283, but under the decisions of our own State the pension law here under consideration must be held constitutional. *Firemen's Benevolent Ass'n* v. *Lounsbury,* 21 Ill. 510; *Ryan* v. *Foreman,* 262 *id.* 175; *Hughes* v. *Traeger, supra.*"

A further argument was made that the Act could not apply to these policemen whose required service had been largely performed prior to the passage of the act. In disposing of this contention the court cited *State* v. *Love,* 89 Neb. 149; 34 L. R. A. (N. S.) 607, which had upheld a sim-

ilar Nebraska statute, and decided that the matter was entirely within the wisdom and discretion of the legislature.

Prior to the time of the decision in *Hughes* v. *Traeger, supra,* and up to and subsequent to *People* v. *Abbott,* a line of cases grew up which held, either directly or obiter, that a pension is a bounty springing from the graciousness and appreciation of the sovereign, which might be given, withheld, or taken away at pleasure. These cases, with the dates of decision are as follows:

Eddy v. *Morgan,* 216 Ill. 437, 449 (1905)
Ryan v. *Foreman,* 262 Ill. 175, 190 (1914)
Pecoy v. *Chicago,* 265 Ill. 78, 80 (1914)
Stiles v. *Retirement Board,* 281 Ill. 636, 641 (1917)
People v. *Retirement Board,* 326 Ill. 579, 582 (1927)
People v. *Hanson,* 330 Ill. 79, 90 (1928)
McCann v. *Retirement Board,* 331 Ill. 193, 201 (1928)

All these cases proceeded upon the old theory of the definition of a pension as a gratuity, disregarding the broader connotation of the term as used in *Roddy* v. *Valentine,* 268 N. Y. 228, quoted, *supra,* at page 39. They also wholly disregarded the constitutional prohibition in Sec. 19, Article IV of the Illinois Constitution against extra compensation for past services, nor does it appear that the Illinois Constitutional point was ever raised or called to the attention of the court in any of those cases.

The gratuity theory in Illinois was originally based on the decisions of this Court as to acts of Congress passed at a time when the term "pensions" commonly referred to the gratuities paid by the Government in recognition of past services in the Army and Navy. "The annuities payable under the Retirement Act are not gratuities in that sense." *Dismuke* v. *United States,* 297 U. S. 167, page 170. While this last statement was used by this Court as to

the Retirement Act involved in its decision in the *Dismuke* case, it is, we contend, equally applicable here to the Miller Act.

Congress is not prohibited from granting the pensions for past services in the Army and Navy which this Court in the *Dismuke* case termed gratuities. On the other hand, the foregoing provision of the Illinois Constitution prohibits the Legislature of that State from granting gratuities.

In *Miner* v. *Stafford,* 326 Ill. 204 (1927), the Supreme Court of Illinois held that the widow of a policeman was not entitled to an increase of pension provided for by a law which was passed after her husband had been injured in line of duty and after his death, but that she was entitled to a continuance of the pension granted by the law in force at the time of the injury and death of her husband, although it was claimed that that law had been wholly repealed and all rights thereunder terminated by the later statute. The decision reversed the Appellate Court, 239 Ill. App. 346, which had held that a pension was a "bounty springing from the graciousness and appreciation of sovereignty."*

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*Another case in which the Illinois Supreme Court held that the rights arising under a statute vested at the time of the happening of the event was that of *Stanswsky* v. *Industrial Commission,* 344 Ill. 436 (1931), involving the rights of the widow of an employee under a State compensation act. The Court there held, pp. 438-440:

> "The liability of the employer and the rights of the workman were fixed at a definite amount under the law existing on January 8, 1929, the date of the injury. * * * the rights of neither can be affected by legislation which takes effect after the date of the injury. * * * It is clear that such rights to compensation * * * could not be enlarged or diminished by an act of the legislature which became effective in July, 1929."

In 1928, *Porter* v. *Loehr,* 332 Ill. 353, was decided. In that case a taxpayer filed a complaint seeking to restrain the Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago from paying pensions to former policement in excess of the amounts allowed them by the laws in force at the time of their respective retirements. The Court held that since the increases in the pensions of those retired prior to the enactment of the law providing for the increase were based solely on services rendered prior to retirement, the increases were extra allowances for past services, were gratuities and were in violation of Section 19 of Article IV of the Illinois Constitution. The case draws the distinction between pensions earned prior to retirement which create enforceable rights and those conferred afterwards which are mere gifts or gratuities, citing Dillon on Municipal Corporations, *People* v. *Abbott, supra;* Matter of *Mahon* v. *Board of Education,* 171 N. Y. 263; *People* v. *Partridge,* 172 N. Y. 305; *Mead* v. *Acton,* 139 Mass. 341; and Gray on Limitations of the Taxing Power and Public Indebtedness, Sec. 338.*

With this decision in *Porter* v. *Loehr* the Court apparently confirmed *People* v. *Abbott,* ignored the line of cases beginning with *Eddy* v. *Morgan* and established a solid foundation for the decision in the next case of *DeWolf* v. *Bowley,* 355 Ill. 530 (1934).

In *DeWolf* v. *Bowley,* a judges pension act of July 1, 1919 was involved. It provided that after 24 years of service a judge of any court of record might retire at age 65 and be entitled to and "receive annually a pension during the remainder of his life" equal to one-half his compensation for the last year of active service. No contributions to the pension were required or made by the judges.

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*The doctrine as to gratuities announced in *Porter* v. *Loehr* was approved in *Berman* v. *Board of Education,* 360 Ill. 535, 541 (1935).

The pension was to be paid from state, county or city funds, respectively, out of moneys not otherwise appropriated.

The judge who brought the action was 65 and had retired prior to reaching that age, after the term of service required by the statute. He was held entitled to draw the pension.

The statute was attacked as in violation of Section 19 of Article IV of the Illinois constitution but was upheld by the court, which said, page 533:

> "Pensions have generally been sustained on the ground that public benefit accrues in two ways: by encouraging such officers or employees to remain in the service, and by retiring from public service those who have become incapacitated from performing the duties as well as they might be performed by younger or more vigorous persons. (1 Dillon on Mun. Corp. (5th ed.) sec. 430.) Cooley, in his treatise on taxation, (1 Cooley on Taxation, (3d ed.) 189,) presents the view of courts generally of this country concerning pensions, that their primary object is not a private but public interest, to show appreciation for meritorious public service, which may reasonably be expected to have a powerful influence in inducing long and continued service. He expresses the opinion that the power of the legislature to pass such acts is undoubted. *Such pensions, generally, are not considered donations or gratuities but inducements to continued service.*" (Italics ours.)

In its decision the court relied upon *People* v. *Abbott* and *Porter* v. *Loehr*. Of the latter case the court said, page 536:

> "* * * while the retired officer in that case was entitled to continuance of the pension granted by the Pension act in force when he retired, he was not en-

titled to the increase provided by the amendment to that Act."

Hughes v. *Traeger, People* v. *Abbott, Miner* v. *Stafford, Porter* v. *Loehr* and *DeWolf* v. *Bowley,* show a steady progression in one direction and would seem to indicate that the law upon these pension cases had reached certainty and finality, based upon common sense and legal precedent. It is difficult to comprehend why the decision in the present case should have turned away from settled law and been based upon an earlier error. The court here not only held that appellants' rights were mere expectancies but went to great length to construe as applicable to them a statute (the 1935 amendment to the Miller Act, Appendix, page 68) which said:

"* * * The board of education * * * *as soon as practical after this law becomes effective, shall retire all teachers,* etc.

"*Every person so retired* from service shall be paid the sum of $500.00 annually and for life," etc.

We suggest to this Court that such a strained construction as that which applies the 1935 amendment to appellants who retired before its passage, may in itself amount to a denial of due process of law.

The assertion made by the Illinois Supreme Court in this case that under the reasoning of *Pennie* v. *Reis* all that became vested upon appellants several retirements was a right to any particular past due installment seems to us wholly unfounded. There is only one event happening, not a series of events occurring every time an installment falls due.

Life estates, life annuities, life tenances are among the oldest and best recognized features of the common law,

and from the inception of our law have had a well recognized and clearly defined meaning.

It is a matter of common knowledge that in the last few years a practice has become prevalent of investing in annuities sold by insurance companies. One form of such annuities is what is called a "deferred payment annuity" which may be paid for in a lump sum. Rights in such a contract certainly vest upon the entering into of the contract and the payment of the consideration although the annual payments of the annuity do not commence until the deferred date agreed upon.

In any event, with respect to the Illinois cases, this Court should take cognizance of conflicting decisions upon the point in issue and should apply the rule stated in *Pease* v. *Peck*, 18 How. 595, at page 599, that:

> "When the decisions of the state court are not consistent, we do not feel bound to follow the last, if it is contrary to our own convictions,—and much more is this the case, where, after a long course of consistent decisions, some new light suddenly springs up or an excited public opinion has elicited new doctrines, subversive of former safe precedent."

3. Where, as in this case, there is ample consideration for a contract between teacher and state, the presence or absence of teacher contributions is immaterial.

The Appellees take the position in their statement against the jurisdiction of this Court that no contract can exist or vested rights arise in the absence of contributions made by the teachers themselves toward their own annuities. This is an argument not considered by the courts below but it can be answered upon reason and authority that the presence or absence of individual contributions does not affect the contract rights here claimed.

Appellants' contracts with the state arose upon their retirement and change of position and by reason of their acceptance of an offer made to them and the consideration which flowed between the parties at that time, as has been more fully discussed in the preceding sections of this brief. There would have been no additional consideration if the contributory feature had been added.

The state cases make no distinction between contributions or lack of them. Where contributions are present, the sums withheld are not considered the property of the employee and he has no contract which will prevent the fund from being divested and his expectancy therein destroyed. The amounts deducted from his salary to form a part of his future pension do not become his property and cannot be controlled or disposed of by him. The fund created by these deductions, which is a part of a larger fund contributed by the governmental body, is not encumbered by any vested rights of the employee and he may not assert any.

Hughes v. *Traeger*, 264 Ill. 612.

It is not until the happening of the event designated by the statute for the distribution of the fund that any vested right is created and the employee may be heard in support of a claim to participation in the fund.

Pennie v. *Reis*, 132 U. S. 464.
Roddy v. *Valentine*, 268 N. Y. 228, 197 N. E. 260.
Dillon on Municipal Corporation, 5th Ed., Secs. 430, 431.

If the theory that contributions in and of themselves constitute the test of rights created were sound, the employee, teacher, policeman, stenographer or clerk would have a vested right in a pension fund or annuity which

would arise at the time the contribution was withheld from salary. Yet all the cases deny that such an interest exists prior to retirement. They hold, following *Pennie* v. *Reis, supra,* that no property rights are created because the sums withheld are not the property of the employee. For a clear and concise statement of the principles which govern this case we refer again to the quotation from *Roddy* v. *Valentine,* 268 N. Y. 228, which is given above in this brief, page 39.

The Illinois Courts have not applied any rule requiring contributions. *DeWolf* v. *Bowley,* 355 Ill. 530 (1934), held that judges had vested rights to an annuity to which they had contributed nothing. *People* v. *Abbott,* 274 Ill. 380, sustained a claim of right to participate in a police pension fund where contributions were provided for in the law but none had in fact been made.

Other recent cases finding a contract and protecting vested rights acquired upon retirement where no contributions were made by the employee of a private corporation, are *Schofield* v. *Zion's Co-operative Mercantile Institution,* 85 Utah 281, 39 Pac. (2d) 342, 96 A. L. R. 1083 (1934) (an uncommonly well reasoned discussion of the whole subject); and *Psutka* v. *Michigan Alkali Co.,* 274 Mich. 318, 264 N. W. 385 (1936).

In December, 1916, the "Illinois Pension Laws Commission", having been appointed by the Governor the previous January pursuant to action of the Legislature, reported on public employee pension laws in Illinois and also in other states and countries. This report was printed and published by authority of the State of Illinois. Among the conclusions of the Commission itself, the following was stated as to the effect of pensions on wages and salaries whether contributions were made or not (p. 282):

> "Whether the contribution to a pension fund be taken wholly from the employee's wages or salary, or

be paid wholly by the employer, or be derived in part from each, these contributions are in all three cases to be regarded as in reality a deduction from wages or salary. It is the opinion of students of the pension problem that the existence of a pension system in connection with any position or employment is taken into account by both parties to the contract of employment, and that, broadly speaking, wages and salaries actually paid are in due course reduced below what they otherwise would be by the amount of the total contributions from both the employer and employee to a pension fund. The employee will thus pay for his pension by deductions from his wages or salary, whether he is conscious of it or not.'"*

Where the statutory scheme contemplates that a retirement fund is created wholly or in large part out of public money, the withholding of small amounts from service

*This same report discloses, pp. 22, 24, that in Great Britain from 1859 to the date of the report all public employee pension systems were noncontributory and the pensions were paid entirely from public moneys. The report stated, p. 23:

"In brief, after a hundred years of experience with civil service pensions in England, the pensions are regarded very generally as deferred pay. Thus an employee acquires an equity in the nature of a pension expectation; and to leave the service without a consideration for this equity is analogous to lapsing life insurance without a surrender value. * * * It was in the law of 1909 that the principle was recognized that even with a noncontributory system the employee who withdraws from the service should receive certain benefits. He should receive these because he worked for lower wages or salary than he would have done if no pension system had existed. In other words, even a noncontributory system of pensions has in England become virtually contributory, because wages and salaries are held at a lower level on account of the pension prospects."

compensation does not constitute contributions to the fund and does not create any right to it. Where, however, the statutory conditions for retirement have been met and an award of the annuity or benefit has been made, or of right should have been made, the interest becomes vested and takes on the attributes of a contract, which, in the absence of statutory reservations, may not legally be diminished

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The report also stated as to pensions in Germany (p. 30) that

> "As in England we find the pensions for government employees on a noncontributory basis."

A similar statement is made as to the civil service system in Austria-Hungary, (p. 32):

> "Pensions sufficient to give a subsistence are secured by the treasury without contributions from employees * * *"

While at the time of the Commission's investigation (1916) all pension systems then existing in Illinois were contributory, the report stated (p. 49):

> "This practice (contributions by employees) is by no means universal in this country. Out of 177 acts investigated, 65, or about 37 percent, do not provide for direct contributions from salaries of employees."

The report then proceeds to analyze these 65 systems relating to firemen's pensions, police pensions and teachers' pensions.

The Illinois Commission itself in analyzing the theory of public employee pension systems said (p. 273):

> "Continuity of service is of great advantage to the employer in most lines of effort. It is especially so in the public service, * * *.
>
> "Pensions tend also to protect the public service from incompetence through the continuance in that service of an employee after his period of efficiency has passed. * * * The chief attraction of a pension system to an employee is, however, that it means a life annuity at the end of service."

or otherwise adversely affected by subsequent legislation, regardless of the presence or absence of contributions.

Respectfully submitted,

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APPENDIX.

Sections 138 and 161 of Otis Amendments relating to the Board of Education of the City of Chicago effective April 20, 1917.

§ 138. A board of three examiners is hereby constituted, whose duty it shall be to examine all applicants who are required to hold certificates to teach and the board of education shall issue gratuitously to those who pass a required test of character, scholarship and general fitness, such certificates to teach as they are found entitled to receive. Such board of examiners shall consist of the superintendent of schools together with two persons approved and appointed by the board of education upon the nomination of the superintendent of schools. The board of examiners shall hold such examinations as the board of education may prescribe, upon the recommendation of the superintendent of schools and shall prepare all necessary eligible lists, which shall be kept in the office of the superintendent of schools and be open to public inspection. Members of said board of examiners shall hold office for a term of two years. Appointments and promotions of teachers, principals and other educational employees shall be made for merit only, and after satisfactory service for a probationary period of three years, (during which period the board may dismiss or discharge any such probationary employee upon the recommendation, accompanied by the written reasons therefor, of the superintendent of schools), appointments of teachers and principals shall become permanent, subject to the rules of the board concerning conduct and efficiency, and subject to removal for cause in the

manner provided by section 161 of this Act: *Provided, however,* that in determining the duration of the probationary period of employment in this section specified, there shall be included the time of past service of all teachers and principals and other educational employees who are in the schools at the time, or who have been therein within five years immediately preceding the time this Act goes into effect: *And further provided,* that when any teacher or principal, who has been promoted to the position of assistant or district superintendent or a member of the board of examiners, is relieved of the duties of such position, such person shall be reinstated in the position from which he was promoted. The words "teachers and principals" shall be construed to include all members of the teaching force except the superintendent of schools, assistant and district superintendents and members of the board of examiners. (Smith-Hurd Ill. Rev. Stats. 1925, chap. 122, par. 161, sec. 138.)

§ 161. No teacher or principal who has been or shall be appointed by said board of education shall (after serving the probationary period of three years specified in section 138 of this Act) be removed except for cause, and then only by a vote of not less than a majority of all members of the board, upon written charges presented by the superintendent of schools, to be heard by the board, or a duly authorized committee of the same, after thirty days' notice, with copy of the charges, is served upon the person against whom they are preferred, who shall have the privilege of being present, together with counsel, offering evidence and making defense thereto. At the request of any party such hearing shall be public. The action and decision of the board in the matter shall be final. Pending the hearing of such charges, the person charged may be suspended

as by the rules of the board may be prescribed: *Provided, however,* that in the event of acquittal, such person shall not suffer any loss of salary by reason of the suspension. If at any time any member of the teaching force who is willing to continue is dismissed or discharged before the time he or she would under the provisions of this Act be entitled to a pension, then such member shall be paid back at once the money he or she may have contributed under this law. Any member of the teaching force who shall retire voluntarily from the service, prior to entering upon the period of service during which he or she might become entitled to a pension or benefit for or on account of disability, as provided by law, shall receive a refund of one-half of the money he or she shall have contributed under this law. (Smith-Hurd Ill. Rev. Stats. 1925, chap. 122, par. 186, sec. 161.)

Original Miller Act.

Effective May 19, 1926.

An Act to provide for the compulsory retirement of teachers, principals, district superintendents and assistant superintendents, and the payment of retirement annuities.

Section 1. In every city in this State having a population exceeding 250,000 inhabitants, the board of education of such city shall retire from active service on February 1 and August 1 of each year, all teachers, principals, district superintendents, and assistant superintendents in the public schools of such city in accordance with the following schedule:

(a) In the year 1926 all teachers, principals, district superintendents, and assistant superintendents seventy-five or more years of age, shall be retired from active service.

(b) In the year 1927 all teachers, principals, district superintendents, and assistant superintendents seventy-four or more years of age, shall be retired from active service.

(c) In the year 1928 all teachers, principals, district superintendents, and assistant superintendents seventy-three or more years of age, shall be retired from active service.

(d) In the year 1929 all teachers, principals, district superintendents, and assistant superintendents seventy-two or more years of age, shall be retired from active service.

(e) In the year 1930 and in each and every year thereafter, all teachers, principals, district superintendents, and assistant superintendents seventy or more years of age, shall be retired from active service.

Sec. 2. Each person so retired from active service who served in the public schools of such city for twenty or more years prior to such retirement shall be paid the sum of fifteen hundred dollars ($1,500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes: *Provided,* that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service: *And, provided further,* that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State; and shall not repeal or modify any other such statutory provisions. (Cahill's Ill. Rev. Stats. 1927, chap. 122, par. 269, (1), (2).)

Amendment of 1927 to the Miller Act.

An Act to add section 3 to and to amend the title of "An act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and the payment of retirement annuities," approved May 19, 1926.

SECTION 1. Section 3 is added to "An Act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and the payment of retirement annuities," approved May 19, 1926, the added section to read as follows:

SECTION 3. All teachers, principals, district superintendents, and assistant superintendents who have served in the public schools of the United States for twenty-five years or more and who have served in the public schools of such city for 15 years immediately prior to retirement under this Act and who are 65 or more years of age and who have not reached the age of compulsory retirement as provided in sections one and two of the last mentioned Act to which this section is added, shall upon their own request be retired from active service and thereafter be paid annuities for life from the moneys derived from the general tax levy for educational purposes. Such annuities shall be paid respectively according to the following table of ages and annuities annually:

Age 65—Ten hundred dollars ($1,000)
Age 66—Eleven hundred dollars ($1,100)
Age 67—Twelve hundred dollars ($1,200)
Age 68—Thirteen hundred dollars ($1,300)
Age 69—Fourteen hundred dollars ($1,400)
Age 70—And thereafter fifteen hundred dollars ($1,500)

And provided that at the age of 65 and at any year of age thereafter, the board of education of such city may require a physical or a mental examination of any such teacher, principal, district superintendent or assistant superintendent upon the request of the superintendent of schools of such city and if any such teacher, principal, district superintendent or assistant superintendent be found incapacitated for service after trial as already or hereafter provided by law he shall be retired at the annuity above provided for that age of voluntary requirement.

And provided further, that all such teachers, principals, district superintendents, and assistant superintendents shall be subject to the same conditions as to advisory service as provided for in section 2 of said last mentioned Act to which this section is added. Nothing contained in this section or in said last mentioned Act to which this section is added shall in any way impair or prejudice any right of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund or teachers' pension and retirement fund established in accordance with the provisions of any statute of this State, and the payment to be made under this section or the Act to which it is added shall be in addition to any such annuity.

SECTION 2. The title of said Act is amended to read as follows: "An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superintendents, and the payment of retirement annuities." In effect July 1, 1927. (Cahill's Ill. Rev. Stats. 1927, chap. 122, par. 269 (3).)

Section 3 of Miller Act as Amended in 1929.

Section 3. Any superintendent of schools or member of the board of examiners and all teachers, principals, district superintendents, and assistant superintendents, now or hereafter serving in any of the aforesaid capacities in the public schools of such city, and whose services in any one or more of any educational positions in the public schools of such city within the last twenty (20) years prior to retirement under this Act, shall aggregate, when taken together, fifteen (15) years or more, and who have served in the public schools of the United States for twenty-five years or more, and who are sixty-five (65) or more years of age, and who have not reached the age of compulsory retirement, as provided in sections one and two of this Act, shall upon their own request, be retired from active service and thereafter be paid annuities for life from the moneys derived from the general tax levy for educational purposes; *provided* that no superintendent of schools or member of said board of examiners shall be subject to compulsory retirement under the provisions of this Act, during his or her term of office.

Such annuities shall be paid respectively according to the following table of ages and annuities annually:

Age 65	ten hundred dollars	($1,000)
Age 66	eleven hundred dollars	($1,100)
Age 67	twelve hundred dollars	($1,200)
Age 68	thirteen hundred dollars	($1,300)
Age 69	fourteen hundred dollars	($1,400)

And provided, that at the age of sixty-five (65) and at any year of age thereafter, the board of education of such city may require a physical or a mental examination of any such teacher, principal, district superintendent, or assistant

superintendent upon the request of the superintendent of schools of such city and if any such teacher, principal, district superintendent, or assistant superintendent be found incapacitated for service after trial as already or hereafter provided by law he shall be retired at the annuity above provided for that age of voluntary retirement.

And provided further, that all such superintendents of schools, members of the board of examiners, teachers, principals, district superintendents, and assistant superintendents shall be subject to the same conditions as to advisory service as provided for in section 2 of this Act. Nothing contained in this Act shall in any way impair or prejudice the right of any superintendent of schools, member of the board of examiners, teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund or teachers' pension and retirement fund established in accordance with the provisions of any statute of this State, and the payment to be made under this section, or the Act which it amends, shall be in addition to any such annuity. (Cahill's Ill. Rev. Stats. 1929, chap. 122, par. 269 (3).)

Amended Miller Act.

Effective July 12, 1935.

"An Act to amend Sections One and Two and the title of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents, and assistant superintendents and for the voluntary retirement of superintendents of schools and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as subsequently amended, and to repeal Section 3 of said Act."

Be it enacted by the People of the State of Illinois represented in the General Assembly;

Section 1. Sections 1 and 2 of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superintendents and for the voluntary retirement of superintendents of school and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as amended, are amended to read as follows:

Section 1. In every city in this State having a population exceeding 250,000 inhabitants, the board of education of such city, as soon as practical after this law becomes effective, shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools in such city, who are sixty-five or more years of age, and thereafter shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools of such city, on attaining the age of sixty-five years.

Section 2. Each person so retired from service shall be paid the sum of five hundred dollars ($500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes. *Provided,* that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service: *And, provided further,* that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State.

Section 2. The title of said Act is amended to read as follows: "An Act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and for the payment of retirement annuities."

Section 3. Section 3 of said Act is repealed.
(Ill. State Bar Stats. 1935, chap. 122, par. 269 (1), (2).)